

**Introduced by Senator Soto**

May 21, 2003

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Senate Joint Resolution No. 19—Relative to the North American Free Trade Agreement.

## LEGISLATIVE COUNSEL'S DIGEST

SJR 19, as introduced, Soto. The North American Free Trade Agreement.

This measure would memorialize the President and Congress of the United States to take appropriate action to amend the North American Free Trade Agreement to provide that foreign investors may not file suits under Chapter 11 of the agreement against a signatory to the agreement concerning environmental and human health and safety laws that do not discriminate in their treatment of domestic and foreign investors.

Fiscal committee: no.

- 1 WHEREAS, The North American Free Trade Agreement
- 2 (NAFTA) is a current international trade agreement to which the
- 3 United States is a signatory; and
- 4 WHEREAS, Under Section 2 of Article VI of the United States
- 5 Constitution, NAFTA's provisions are law in the United States and
- 6 may supersede state and federal laws; and
- 7 WHEREAS, Chapter 11 of NAFTA pertains to investment by
- 8 investors of a NAFTA signatory in the territories of other NAFTA
- 9 signatories; and
- 10 WHEREAS, Under Article 1110 of Chapter 11 of NAFTA, a
- 11 NAFTA signatory may not "directly or indirectly nationalize or
- 12 expropriate an investment of an investor of another [signatory] in



1 its territory or take a measure tantamount to nationalization or  
2 expropriation of such an investment unless” specified  
3 requirements are met; and

4 WHEREAS, Article 1114 of Chapter 11 of NAFTA provides  
5 that nothing in Chapter 11 shall be construed to prevent a signatory  
6 from “adopting, maintaining or enforcing any measure otherwise  
7 consistent with this Chapter that it considers appropriate to ensure  
8 that investment activity in its territory is undertaken in a manner  
9 sensitive to environmental concerns”; and

10 WHEREAS, Notwithstanding Article 1114 of Chapter 11 of  
11 NAFTA, investors have filed suit and received awards or  
12 settlements on the grounds that environmental regulations violated  
13 Chapter 11 of NAFTA; and

14 WHEREAS, The following cases, according to “NAFTA  
15 Chapter 11 Investor-to-State Cases: Bankrupting Democracy,”  
16 published by Public Citizen, had the following outcomes:

17 (a) In *Metalclad v. Municipality of Guadalcazar, Mexico*,  
18 Metalclad, an American corporation, built a toxic waste facility,  
19 without the proper local permit, and was ultimately denied the  
20 permit. Additionally, the area was made an ecological zone. In  
21 1997, Metalclad sued the government of Mexico under Chapter 11  
22 of the NAFTA, claiming that the denial of the permit by the local  
23 government amounted to expropriation without compensation.  
24 After a special NAFTA tribunal heard the case and a Canadian  
25 court heard the appeal, Mexico settled with Metalclad for  
26 \$15,600,000.

27 (b) In *Ethyl v. Canada*, Ethyl Corporation, an American  
28 corporation that manufactures methylcyclopentadienyl  
29 manganese tricarbonyl (MMT), that was banned from use in  
30 unleaded gasoline by California and the United States  
31 Environmental Protection Agency, due to environmental and  
32 public health concerns, informed Canada, which was considering  
33 banning MMT, that it would sue for compensation under Chapter  
34 11 of NAFTA, if Canada restricted MMT. In 1997, when Canada  
35 subsequently banned MMT, Ethyl filed suit against Canada under  
36 Chapter 11 of NAFTA. Canada subsequently reversed its ban on  
37 MMT, settled with Ethyl for \$13,000,000, and issued a statement  
38 for Ethyl’s use in advertising, declaring that “current scientific  
39 information” did not demonstrate MMT’s toxicity.



(c) In *Methanex v. California*, Methanex, a Canadian-based corporation that produces and markets methanol, which is the key ingredient in methyl tertiary-butyl ether (MTBE), used Chapter 11 of NAFTA to challenge California's ban of MTBE in gasoline in California, the purpose of which is to protect drinking water from contamination, and sought \$970,000,000 if MTBE is not permitted in gasoline sold in California. The suit was filed in 1999 and is still being decided.

(d) In *Sun Belt v. British Columbia*, Sun Belt Water, Inc., an American corporation that imports and exports water, filed a "notice of claim and demand for arbitration" against Canada for damages under Chapter 11 of the NAFTA regarding Canada's settlement of a suit regarding Canada's ban on water exports with a Canadian company, but not with Sun Belt. Sun Belt sought \$10,500,000,000; and

WHEREAS, Chapter 11 NAFTA cases like those summarized above are detrimental to the protection of the environmental health of Californians in the following ways:

(a) Both successful and unsuccessful Chapter 11 NAFTA suits concerning environmental regulations encourage and legitimize similar cases that are detrimental to the environment.

(b) Decisions like those summarized above dangerously limit basic governmental functions. Sovereign governments must be able to regulate substances that are dangerous to the environment without interference from, and reimbursement to, manufacturers of the harmful substances.

(c) Local governments that act in the interest of their constituencies' health and safety have their judgment overruled by NAFTA tribunals that act in the economic interests of foreign corporations.

(d) Investor rights override the health and safety of human beings, a result that is not consistent with the laws of the United States or other international laws.

(e) They conflict with, and may supersede, state and federal laws; and

WHEREAS, If these trends continue, no state or federal law will be safe from attack by foreign investors using Chapter 11 of NAFTA. California, along with other states, in fear of a Chapter 11 NAFTA suit that may overturn state law or award monetary

1 damages, will be intimidated from creating and enforcing  
2 environmental regulations that protect its citizens; and

3 WHEREAS, The risk of environmental health problems is  
4 increased, and states' powers to defend their residents from this  
5 increased risk are hindered, exacerbating environmental health  
6 problems and resulting in the severe compromise of states'  
7 responsibilities and rights to protect their residents and land from  
8 environmental dangers; and

9 WHEREAS, NAFTA creates an incentive for American  
10 corporations to relocate to Mexico where they are subject to more  
11 lenient occupational safety codes and environmental regulations,  
12 which has created an environmental problem on the  
13 California-Mexico border; now, therefore, be it

14 *Resolved by the Senate and Assembly of the State of California,*  
15 *jointly,* That the Legislature respectfully memorializes the  
16 President and Congress of the United States to take appropriate  
17 action to amend the North American Free Trade Agreement to  
18 provide that foreign investors may not file suits under Chapter 11  
19 of the agreement against a signatory to the agreement concerning  
20 environmental and human health and safety laws that do not  
21 discriminate in their treatment of domestic and foreign investors;  
22 and be it further

23 *Resolved,* That the Secretary of the Senate transmit copies of  
24 this resolution to the President and Vice President of the United  
25 States, to the Speaker of the House of Representatives, to the  
26 Majority Leader of the Senate, and to each Senator and  
27 Representative from California in the Congress of the United  
28 States.

